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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

TIFFANY LYNN HILL,

Defendant and Appellant.

B208629

(Los Angeles County
Super. Ct. No. BH005162)

APPEAL from an order of the Superior Court of Los Angeles County, Dorothy L. Shubin and Janice C. Croft, Judges. Remanded with directions.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence M. Daniels and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

Tiffany Lynn Hill appeals from an order denying without prejudice her petition for relief from a five-year prohibition against owning or possessing firearms imposed pursuant to Welfare and Institutions Code section 8103, subdivision (f),¹ after she had been detained for mental health treatment and evaluation. (§ 5150.) We remand for a new hearing.

GOVERNING STATUTORY PROVISIONS

Section 5150 permits a person to be detained involuntarily for 72 hours for mental health treatment and evaluation when there is probable cause to believe the person is a danger to himself or herself or to others. Pursuant to section 8103, subdivision (f), a person who has been admitted to a mental health facility pursuant to section 5150 may not own, possess, control, receive or purchase any firearm for a period of five years after detention (§ 8103, subd. (f)(1)) unless the person requests a hearing and the trial court finds the People have not met their burden to show “by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.” (§ 8103, subd. (f)(6); see *People v. Keil* (2008) 161 Cal.App.4th 34, 38.) If the district attorney “declines or fails to go forward in the hearing” scheduled pursuant to section 8103, subdivision (f)(5), the court must relieve the person of the firearms prohibition. (§ 8103, subd. (f)(8).)

FACTUAL AND PROCEDURAL BACKGROUND

Hill was involuntarily admitted to a mental health facility in Pasadena under section 5150 on October 6, 2007 and discharged on October 12, 2007. She requested a hearing for relief from the firearms prohibition at the time of her discharge. In a letter dated October 16, 2007 the director of the mental health facility notified the Los Angeles Superior Court of Hill’s request. (It appears the written notification of Hill’s request was not received by the court until January 29, 2008; no explanation for the delay is provided.) In a letter dated March 13, 2008 from the office of court services, Hill was

¹ Statutory references are to the Welfare and Institutions Code.

given a hearing date of April 21, 2008, and advised she should be “prepared to provide a Medical Release” at the hearing.

Hill appeared without counsel at the April 21, 2008 hearing before Judge Dorothy L. Shubin. Both Hill and Deputy District Attorney Susan Navas, representing the People, requested a continuance to evaluate what information Hill needed to present to the court to have her request for relief considered. Navas explained to the court, “I have spoken to Ms. Hill, and told her she needs to go back to this program and request the [medical] release letter, and perhaps she can bring that on the next date. And by that time Mr. Debbaudt [(another deputy district attorney)] and I will have looked into this and know if there is anything else needed.” Asked how much time was needed, Hill advised the court she could see the director of the facility that day to obtain the required medical release. The trial court then continued the hearing to April 29, 2008, stating, “We are here today because of the wording in the letter. The People are stating an objection to it, but I am going to give you an opportunity to give *[sic]* you something they would think is more in compliance.”

The hearing resumed on April 29, 2008 before Judge Janice Claire Croft. The hearing was not reported, and the minute order prepared following the hearing is sparse, indicating only the matter was called, a medical release was provided and the court denied the petition without prejudice. No appearance is shown on the minute order for either Hill or counsel representing the People. The record on appeal indicates the “medical release” referred to in the minute order was a handwritten note from Dr. Mohamed El-Gabalawy on a prescription pad, stating Hill “was released from the hospital without any concern about her safety. She could resume her right to carry firearms. The 5150 petition should be erased from her records”

We granted Hill’s motion to augment the record on appeal to include a settled statement of the April 29, 2008 hearing. According to that settled statement, which was developed at a hearing before Judge Croft in February 2009, Hill had provided the medical release as requested by Judge Shubin on April 21, 2008 (apparently Dr. El-Gabalawy’s note), but Judge Croft wanted to review Hill’s medical records. Because

those records were not available at the continued hearing, the court denied the petition without prejudice. The settled statement does not indicate whether counsel for the People was present at the April 29, 2008 hearing.

DISCUSSION

The Attorney General acknowledges on appeal, pursuant to section 8103, subdivision (f)(6), Hill's petition for relief from the five-year firearms prohibition must be granted unless the People establish by a preponderance of the evidence that she is not likely to use firearms in a safe and lawful manner. The trial court (both Judge Shubin and Judge Croft) misapplied the statutory burden of proof, improperly requiring Hill to present evidence (a "medical certificate" or her medical records) establishing she was likely to use firearms safely.² Accordingly, the Attorney General recommends, and we agree, the matter must be remanded for a new hearing.

Hill, however, contends the district attorney failed to proceed with her hearing on April 29, 2008 and argues, pursuant to section 8103, subdivision (f)(8), the court was required to enter an order in her favor at that time. As discussed, neither the minute order from the April 29, 2008 hearing nor the settled statement prepared at the request of Hill's appellate counsel at a hearing she attended indicates whether anyone from the district attorney's office was present in court on April 29, 2008 or, if not, whether any valid justification for counsel's nonappearance was proffered. No inference of an abandonment of the People's opposition to Hill's petition within the meaning of section 8103, subdivision (f)(8), is proper from this meager record. Moreover, in view of the

² In contrast to section 8103, subdivision (f), in a proceeding for release from the five-year firearms prohibition automatically imposed pursuant to section 8103, subdivision (g)(1), upon a person certified for intensive treatment pursuant to sections 5250 (14-day hold for being a danger to self, danger to others or gravely disabled), 5260 (second 14-day hold for being a danger to self) or 5270.15 (30-day hold for being gravely disabled as a result of a mental disorder or impairment by chronic alcoholism), the burden of proof is on the person seeking relief; and the firearms restriction may be removed only if the person establishes "by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner." (§ 8103, subd. (g)(4).)

trial court's mistaken belief Hill had the burden of proof and was required to present evidence establishing her entitlement to relief from the firearms prohibition—a misperception apparently shared by the district court's office in this case—the failure of the People to make an evidentiary presentation is both understandable and an insufficient basis to conclude the district attorney declined to go forward with the proceeding.

DISPOSITION

The order denying the petition for relief is vacated and the matter remanded for a new hearing in accordance with the requirements of section 8103, subdivision (f).

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.